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No. 00-196

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CENTURY IMPORTERS, INC.,

Petitioner,

v.

UNITED STATES,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF PARTIES

The caption identifies all parties to the proceeding in the court whose judgment is sought to be reviewed.

The parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of the petitioner are Phillip Morris Co. and The Molson Companies, Ltd.

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ARGUMENT

Century Importers, Inc. ("Century") respectfully submits this reply brief in support of its petition for a writ of certiorari to review the judgment of the United States Court of Appeal for the Federal Circuit ("Court of

Appeals") in this case.

1. In its Brief for the United States in Opposition ("Opp."), the respondent United States argues that the appellate court's "discussion of Section 1520(c) [19 U.S.C. § 1520(c)] had no material bearing on the Federal Circuit's holding that Customs correctly calculated the transaction value of the imported merchandise . . . " (Opp. at 8), while at the same time agreeing with the petitioner that "this action was not brought pursuant to Section 1520(c) and cannot be corrected pursuant to that provision." Opp. at 11. The fact that both parties acknowledge that the appellate court analyzed the wrong statute is strong evidence that the entire decision is tainted. The appellate court spent pages analyzing Section 1520(c), concluding that the error at issue was one of law that could not be corrected under Section 1520, when the importer, however, was seeking not correction of an error but reappraisement under 19 U.S.C. 1514(a)(1), the statute pursuant to which the case was filed.

It is respectfully submitted that the entire decision of the appellate court was colored by its holding that a non-correctable error of law occurred. The appellate court noted the respondent's admission that "it might well have reached a different appraisal if it had been informed . . ."

of the error.[1] The respondent makes much of the court of appeals' statement that "§ 1520 does not apply to this case," (Pet. App. 9a, cited at Opp. 10 and 11) taking this phrase out of context and suggesting that this statement means that § 1520 should not be applied to the facts of this case. In reality this phrase was the court's way of indicating that it did apply § 1520(c) to the facts of this case and found that it did not authorize relief.

2. The respondent also argues that the repayment of the customs duties by the exporter was a rebate, noting repeatedly that the payment was made after entry (Opp. at 8, 9) as if this simple fact were determinative. The respondent fails ever to acknowledge that the exporter's contractual obligation to reimburse the customs duties to petitioner was created months before the imports in questions were entered into the United States (Petitioner's Brief, Appendix 3a), and that the obligation of an importer to pay duty does not arise until after the merchandise is entered into the United States. Thus, any reimbursement of customs duties pursuant to a duty-paid contract term of sale must occur after the entry.

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[1] The dissent more accurately stated that the "Customs Service readily acknowledged . . ." that it would have appraised in a manner as proposed by the petitioner but for the presence of the error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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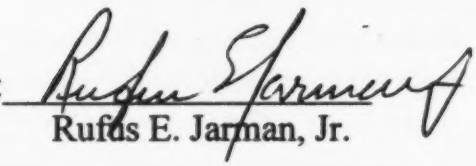
By: 
Rufus E. Jarman, Jr.

Dated: October 23, 2000